

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:LM: [REDACTED]: POSTF-113213-02  
[REDACTED]

date: 3/12/02

to: [REDACTED], Team Coordinator  
[REDACTED]

from: Associate Area Counsel, LM: [REDACTED]

---

subject: Agent for [REDACTED]  
[REDACTED]. Audit

U.I.L. Nos. 1502.75-11 and 1502.77-00

This is in reply to your request for assistance dated February 27, 2002. The advice rendered, however, is conditioned on the accuracy of the facts provided by you.

This memorandum should not be cited as precedent. It is also subject to 10-day post review in the National Office and, therefore, may be modified.

ISSUE

Who can act as common agent for the [REDACTED] consolidated group following an internal reorganization and the spin-off of certain subsidiaries?

CONCLUSION

[REDACTED] Corporation is the new common parent and agent for the [REDACTED] affiliated group following the internal reorganization and spin-off of certain subsidiaries. As agent for the [REDACTED], [REDACTED] Corporation can sign both forms 870 and 872 and receive tax refunds.

For the sake of clarity, we recommend that, when dealing with [REDACTED] Corporation as agent for the [REDACTED], the corporation be referred to as "[REDACTED] Corporation, formerly known as [REDACTED] Corporation and prior thereto as [REDACTED] Inc." The foregoing name should be asterisked and at the bottom of form 872, in particular, the following language should be inserted after the asterisk:

20119

"\*As common parent with regard to the consolidated tax liability of the [REDACTED] Corporation (EIN: [REDACTED]) and Subsidiaries consolidated return group for the group's taxable year(s) \_\_\_\_\_."

The historical EIN of [REDACTED] Corporation should continue to be used on any waivers or agreements relating to the [REDACTED].

#### FACTS

[REDACTED] Corporation ([REDACTED]) was the common parent of an affiliated group of corporations that filed consolidated federal income tax returns. [REDACTED] was engaged in the [REDACTED] business and also in the [REDACTED] business principally through its wholly-owned subsidiary, [REDACTED] Company. [REDACTED] decided to segregate the assets and liabilities of its [REDACTED] business, and then spin off that business to its shareholders.

In May, [REDACTED], [REDACTED] formed [REDACTED], Inc. as a wholly-owned subsidiary. Also, [REDACTED] LLC ([REDACTED] LLC) was formed with [REDACTED], Inc. as its sole member. On [REDACTED], [REDACTED] contributed the stock of [REDACTED] Company to [REDACTED]. On the same date, [REDACTED] was merged into [REDACTED] LLC and the outstanding stock of [REDACTED] was converted into the stock of [REDACTED], Inc.<sup>1</sup> The name of [REDACTED], Inc. was then changed to [REDACTED] Corporation ([REDACTED]). As a result of this internal restructuring, [REDACTED] held the entire ownership interest in [REDACTED] LLC and all of the stock of [REDACTED] Company.

[REDACTED] continued to use the historical EIN of [REDACTED]. In addition, [REDACTED] LLC, being solely owned by [REDACTED], was a disregarded entity and treated as a division of [REDACTED] for federal income tax purposes.

Effective [REDACTED], [REDACTED] LLC was converted into a corporation named [REDACTED] Corporation. [REDACTED] then spun off [REDACTED] Corporation in a tax-free transaction under I.R.C. § 355 to holders of [REDACTED] common stock.<sup>2</sup> Contemporaneously, [REDACTED] changed its name to [REDACTED] Corporation.

---

<sup>1</sup> There is no indication that [REDACTED] designated a new common parent for the group prior to the merger.

<sup>2</sup> [REDACTED] had two classes of voting common stock outstanding, [REDACTED] common stock and [REDACTED] common stock, which were intended to track the performance of the [REDACTED] business and the [REDACTED] business, respectively.

LAW AND ANALYSIS

I.R.C. § 1501 grants an affiliated group of corporations the privilege of filing a return on a consolidated basis. If a consolidated return is filed, the members of the group consent to be bound by the legislative regulations promulgated pursuant to the authority in I.R.C. § 1502. Thus, by filing consolidated returns, the [REDACTED] consented to be bound by the § 1502 regulations.

A central feature of the consolidated return regulations is the role of the common parent as the exclusive agent for the consolidated group with respect to all procedural matters. Treas. Reg. § 1.1502-77(a). The common parent in its name will give waivers, give bonds, and execute closing agreements and all other documents, and any document so given or executed will be considered as having also been given or executed by each subsidiary. The common parent also files claims for refund or credit, and any refund is to be made directly to and in the name of the common parent and will discharge any liability of the Government in respect thereof to any subsidiary.

Treas. Reg. § 1.1502-77(a) further provides that the common parent remains the agent for the members of the group for all years during which it was the common parent, whether or not consolidated returns are filed in subsequent years and whether or not one or more subsidiaries have become or have ceased to be members of the group. As a corollary, the common parent continues to act as agent for any subsidiary which has ceased to be member of the consolidated group for all years in which such subsidiary was a group member. Craigie, Inc. v. Commissioner, 84 T.C. 466 (1985).

Of course, if the common parent ceases to exist, as [REDACTED] did when it merged into [REDACTED] LLC, its authority to act as agent of the group terminates. In the absence of any regulatory provision, the group would be left without an agent to act on its behalf in any subsequent tax matter. Fortunately, the regulations address this problem in the context of the type of internal restructuring done by [REDACTED]. Under Treas. Reg. § 1.1502-75(d)(2)(ii), in the case of a downstream merger, like that involving [REDACTED] and [REDACTED] LLC, the group is considered to remain in existence, notwithstanding that its common parent no longer exists, with its new common parent being the highest-tier, includible corporation which was a member of the group prior to the date the former common parent ceased to exist. See, Rev. Rul. 82-152, 1982-2 C.B. 205.

Thus, in the instant case, the [REDACTED] remained in existence following the merger of Old [REDACTED] into [REDACTED] LLC, and New [REDACTED] (as [REDACTED] was renamed) became the new common parent for the group. New [REDACTED] was the highest-tier, includible corporation in the remaining [REDACTED] chain. It was also a member of the group prior to Old [REDACTED] merging into [REDACTED] LLC, being formed in May, [REDACTED], two months before the merger. As the new common parent, New [REDACTED] was authorized to act as agent for the continuing [REDACTED] with respect to both pre- and post-merger consolidated years. See, Southern Pacific v. Commissioner, supra., where, in a "reverse acquisition", a common parent dissolved after transferring its assets to a newly-formed subsidiary of a new holding company, and the Tax Court held the new holding company was the new common parent for both pre- and post-acquisition years.

As the facts indicate, New [REDACTED] was later renamed [REDACTED] Corporation contemporaneous with the spinoff of [REDACTED] Corporation. The mere renaming of New [REDACTED] to [REDACTED] Corporation (as well as the earlier renaming of [REDACTED] to New [REDACTED]) did not affect [REDACTED]'s status as the common parent and agent for the continuing [REDACTED]. See, Treas. Reg. § 1.1502-75(d)(2)(i). Similarly, the spin off of [REDACTED] Corporation (and its subsidiaries) did not terminate [REDACTED]'s agency status for the [REDACTED]. Treas. Reg. § 1.1502-77(a) provides that the common parent remains the agent for the consolidated group even though one or more subsidiaries ceased to be members of the group.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney-client privilege.

If disclosure becomes necessary, please contact this office for our views. If you have any questions, please call Attorney [REDACTED] at [REDACTED].

[REDACTED]  
Associate Area Counsel (LMSB)

By: [REDACTED]  
[REDACTED]  
Senior Attorney (LMSB)